



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

MITT ROMNEY  
Governor

KERRY HEALEY  
Lieutenant Governor

ELLEN ROY HERZFELDER  
Secretary

ROBERT W. GOLLEDGE, Jr.  
Commissioner

**Summary of Comments and Response to Comments  
on the Emergency Regulation Amendments to**

**310 CMR 7.28  
NO<sub>x</sub> Allowance Trading Program  
and  
Proposed Revisions to the  
State Implementation Plan for Ozone**

**Regulatory Authority:  
M.G.L. c. 111, Sections 142A through 142M**

**January 2005**



The Massachusetts Department of Environmental Protection (the “Department”) filed amendments to 310 CMR 7.28, the NO<sub>x</sub> Allowance Trading Program regulations, with the Massachusetts Secretary of State as an emergency regulation on November 4, 2004. These amendments were effective upon filing. In order to make the regulations permanent, the Department held a public hearing on the emergency regulation and SIP revision on January 4, 2005 in Boston, and solicited public comment on the regulation to comply with the public review process requirements of M.G.L. Chapter 30A. Written comments were accepted through January 4, 2005.

This Response to Comments document responds to written comments received during the public comment period. No oral comments were presented during the hearing. DEP appreciates the input from U.S. Environmental Protection Agency – Region 1 who submitted written comments.

- 1. Comment:** DEP should use a name other than “nameplate capacity” to describe the variable that is used in the calculation of allowances for budget units with less than one full control period of operation to clarify that the variable used in this calculation is not the nameplate capacity as traditionally used, and should incorporate the *Guideline for Determining Nameplate Capacity of New Units* (Attachment B) directly into the definition for this variable.

**Response:** The Department attempted to construct the variable as EPA suggests but found it less confusing to use the existing nameplate capacity terminology rather than to create a new term for this purpose. As it is not possible to foresee all possible facility configurations, the Department has chosen to leave the *Guideline for Determining Nameplate Capacity of New Units* (Attachment B) in the Technical Support Document rather than including it directly in the regulation. In the future, the Department will require new facilities to submit nameplate capacity information as part of the emission control plan required under 310 CMR 7.28 (7)(b)9.

- 2. Comment:** The Department should include the timeframe for when budget units must return the completed control period output template in the section that has been added on to the allocation process.

**Response:** The October 31<sup>st</sup> deadline for submittal of each existing budget unit’s control period output is already stated in the ‘Reporting’ section of the regulation at 310 CMR 7.28(13)(e) and therefore the Department has not modified the emergency regulation in response to this comment.

In addition, the Department received comments prior to the public comment period from Steve Leonard, Brown Rudnick Berlack Israels, regarding the emergency regulation language on determination of the nameplate capacity for use in calculating allowance allocations. Because the commenter may have thought his comments were submitted within the required timeframe, we include them in this Response to Comment document.

**Comment:**

1. The commenter suggests refining the emergency regulation language by replacing "portion of the budget unit configuration" with "component or components (for example, a fossil fuel burner, a steam boiler or \_\_\_\_\_) of the budget unit."
2. The commenter suggests that determination of nameplate capacity from 7.02 plan approvals will not ensure the Department will accomplish its stated principle that allocations "should

reflect the portion of the budget unit's configuration that contributes to useful output" because the 7.02 plan approvals list capacity for an entire unit, not portions of a unit.

3. The commenter suggests that the last sentence in the nameplate capacity section of the emergency regulation is a repetition of the first.

**Response:**

1. The Department considered refining the language as suggested by the commenter, but believes it is not possible to foresee all possible facility configurations. In the future, the Department intends to talk with new facilities early in the approval process to ensure a common understanding of the calculation of allowances earned by a new budget unit with less than one full control period of operation.

2. The Department disagrees with the commenter's assertion that 7.02 plan approvals do not separately state the capacity of combustion turbines and steam turbines. Even if 7.02 approvals had such a limitation, the emergency regulation includes a provision for capacity to be determined in other ways, stating, "Such nameplate capacity shall have been established in a 310 CMR 7.02 plan approval or otherwise determined by the Department."

3. The Department believes that the last sentence should remain in the regulation, as it will ensure that the regulated community is on clear notice of the meaning of the first sentence.